IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/09/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.P. SIVASUBRAMANIAM

H.C.P.NO.466 OF 2004

Subash,
S/o. Ranganathan .. Petitioner

-Vs-

1. The State of Tamilnadu,
Represented by its Secretary,
Department of Prohibition and Excise,
Fort St George, Chennai 9.

2. The District Magistrate and
District Collector,
Cuddalore District,
Cuddalore. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R. Sankarasubbu

For Respondents: Mr. Abudukumar Rajarathinam
Govt. Advocate (Crl.Side)

:J U D G M E N T

P.K. MISRA, J.

The petitioner has challenged the order of detention dated 18.2.2004 , passed by the Respondent No.2, in exercise of power under Section 3 (1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), hereinafter referred to as the Act.

2. In the grounds of detention, the detaining authority had referred to an incident dated 21.4.2004. It is alleged that the detenu and his three associates criminally intimidated the public and vendors in Chidambaram Chinnakadai Street junction and had used dangerous weapons. On the basis of the complaint filed, a case in Chidambaram Town Police Station Crime

No.171/2004 was registered under Sections 392, 50 6(ii) r/w.397 IPC and 27(1) Arms Act of 1959, 9(b)(1) of the Explosive Act, 1884 and 4(1), 5 of Explosive Substance Act, 1908. The District Magistrate referred to earlier involvement of the detenu in Chidambaram Town P.S Cr.No.334/1998 dated 17.10.1998 under section 395 r/w. 149 IPC, Annamalai Nagar P.S. Cr.No.349/1998 dated 19.10.1998 under Sections 147, 148, 326, 324, 302 r/w.149 IPC and Chidambaram Town P. S. Cr.No.1169/2003 dated 17.10.2003 under Section 147, 148, 324, 307, 395, 506(ii) IPC r/w.9(b)(1) of Explosive Act, 25(1)(b), 27(1) Arms Act of 1959 and 4(1), 5 of Explosive Substances Act.

3. In paragraph 5 of the grounds of detention, it was indicated :-
 5) I am aware that Thiru. Subash has been remanded to judicial custody upto 20.02.2004 and lodged in the Central Prison, Cuddalore, in connection with the ground case in Cr.No.171/2004. Further he has filed a bail application before the court of Principal Sessions Judge, Cuddalore on 10.02.2004 and the same is pending in Crl.M.P.No.1480/20 04. Hence there is imminent possibility of coming out on bail in future. I am also aware that in similar cases accused are enlarged by the same Court or the superior Court after lapse of some time. And if he comes out on bail, he will indulge in such further activities in future as well, which will be prejudicial to the maintenance of the public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order. On the materials placed before me, I am satisfied that the said Thiru. Subash is a Goonda as per sec 2(f) of Tamil Nadu Act 14/198 2 and there is compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of Tamil Nadu Act 14 of 1982.

4. In order to appreciate the contentions raised, it is necessary to notice the relevant provisions of the Act.

5. Under Section 2(1)(a), the expression acting in any manner prejudicial to the maintenance of public order means -
(i) to (ii-A) . . .
(iii) in the case of a goonda, when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order.
(iv) and (v) . . .
Under Section 2(f), goonda means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 186 0 (Central Act XIV of 1860).

Under Section 3(1), the State Government is empowered to make orders detaining, inter alia, a goonda, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.
Under Section 3(2), the State Government, by order in writing, may empower the District Magistrate or the Commissioner of Police to exercise the powers conferred under Section 3(1). Under section 3(3), when any such order

is made by an officer, as indicated in Section 3(2), such officer is required to report the fact to the State Government forthwith together with the grounds and such other particulars having bearing in the matter, and no such order passed by the officer indicated in Section 3(2), shall remain in force for more than twelve days,unless, it has been approved by the State Government within the said period.

6. In the present case, the District Collector had passed the order on the footing that the detenu was a Goonda and the order was passed with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order.

7. Learned counsel appearing for the petitioner has contended that as per the definition, as contained in Section 2(f) of the Act, sporadic commission of offences would not bring the offender within the purview of Section 2(f) and the District Collector should be satisfied that the person habitually commits the offences. It is his further contention that the District Collector had referred to two adverse cases of the year 1998 and the cases which had occurred at a distant past should not have been taken into account. It is further submitted by him that if those two adverse cases are taken out of consideration, being too remote in point of time, the detaining authority could not have come to a conclusion on the basis of the remaining two cases, namely, the adverse case dated 17.10.2003 and the ground case dated 2 4.1.2004, that the detenu was a Goonda.

8. Learned counsel has submitted that in order to categorise a person as a Goonda as defined under the Act, there should be allegations relating to commission of more than two offences. In other words, according to him,apart from the ground case, there should be at least two other adverse cases prior to such ground case. For the aforesaid purpose, he has placed reliance upon the decision reported in 1995 SCC (Cri) 454 (MUSTAKMIYA JABBARMIYA SHAIKH v. M.M. MEHTA, COMMISSIONER OF POLICE AND OTHERS), wherein the Supreme Court has observed as follows :-

 8. The Act has defined dangerous person in clause (c) of Section 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression habit or habitual has however,not been defined under the Act. According to The Law Lexicon by P. Ramanatha Aiyar, Reprint Edn. (1987), p.499, habitually means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word habitually means usually and generally. Almost similar meaning is assigned to the words habit in Aiyars Judicial Dictionary, 10th Edn., p.485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a dangerous person unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person

is a habitual criminal. In Gopalanachari V. State of Kerala (1981 SCC (Cri)546) this Court had an occasion to deal with expressions like "bad habit" , "habitual", "desperate", "dangerous", and "hazardous". This Court observed that the word habit implies frequent and usual practice. Again in Vijay Narain Singh v. State of Bihar (1984 SCC (Cri) 361) this Court construed the expression "habitually" to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows that in order to bring a person within the expression " dangerous person" as defined in clause(c) of Section 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of IPC or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of IPC or Chapter V of Arms Act cannot be characterised as a habitual act referred to in Section 2(c) of the Act." (Emphasis added)

9. Even if a cursory reading of the aforesaid decision may indicate that there must be more than two adverse cases committed by a person to dub him up as a habitual offender, judged in the background of the facts in the said case, we do not think that the ratio of the said decision can be said to have laid down such a categorical principle. On the other hand, it is obvious that the said decision is based on the earlier decision of the Supreme Court rep orted in (1984) 3 SCC 14 (VIJAY NARAIN SINGH v. STATE OF BIHAR AND OTHERS). The Supreme Court, while construing a similar provision, had observed as follows :-
" 31. ... The expression "habitually" means "repeatedly" or " persistently". It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. This appears to be clear from the use of the word "habitually" separately in sub-clause (i), subclause (ii) and sub-clause (iv) of Section 2(d) and not in sub-clauses (iii) and (v) of Section 2(d). If the State Legislature had intended that a commission of two or more acts or omissions referred to in any of the sub-clauses (i) to (v) of Section 2(d) was sufficient to make a person an "anti-social element", the definition would have run as " Anti-social element" means "a person who habitually is ...". As Section 2(d) of the Act now stands, whereas under sub-clause (iii) or sub-clause (v) of Section 2(d) a single act or omission referred to in them may be enough to treat the person concerned as an "anti-social element", in the case of sub0clause (i), sub-clause (ii) or sub-clause (iv), there should be a repetition of acts or omissions of the same kind referred to in sub-clause(i), sub-clause(ii) or in sub-clause (iv) by the person concerned to treat him as an "anti-social element". Commission of an act or omission referred to in one of the subclauses (i), (ii) and (iv) and of another act or omission referred to in any other of the said sub-clauses would not be sufficient to treat a person as an "anti-social element". A single act or

omission falling under sub-clause (i) and a single act or omission falling under subclause (iv) of Section 2(d) cannot, therefore, be characterised as a habitual act or omission referred to in either of them. Because the idea of habit involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them cannot be treated as habitual ones.

10. A careful reading of the earlier decision makes it clear that if there is alleged commission of some offences on a single instance, such an offender may not come within the definition of goonda as per Section 2(f) of the Act, but if there is allegation of commission of offences by such offender for the second time, of course within a reasonable proximity of time, such a person may come within the definition of goonda.

11. Learned counsel for the respondents has contended that even if an offence was allegedly committed for the first time by an offender and there was no repetition of commission of similar offence, yet the detaining authority can come to a conclusion that such a person is required to be detained under preventive detention. For the aforesaid purpose, the learned counsel has relied upon a Division Bench decision of this Court reported in 1993 L.W.(Criminal) 113 (SUBBAIAH @ THIRUVOTIYUR SUBBAIYAH @ MAHADEVAN v. THE COMMISSIONER OF POLICE, MADRAS CITY, MADRAS AND ANOTHER). Even though such a submission is justified in respect of preventive detention under the provisions like National Security Act and Conservation Of Foreign Exchange and Prevention of Smuggling Act, keeping in view the precise and specific definition contained in Section 2(f) of the expression Goonda, we do not think such a submission can be accepted. Even in the Division Bench decision relied upon by the respondents, there were two incidents of similar nature committed within a reasonable proximity of each other and in the above context, the Division Bench upheld the order of the preventive detention and there are some observations here and there, which may support the contention of the respondents, which are based on the facts and circumstances of that case, and we do not think in view of the two above mentioned decisions of the Supreme Court such a submission can be accepted.

12. Learned counsel for the respondents has also relied upon an unreported order dated 20.11.2003 made in H.C.P.No.761 of 2003. In the said order, the Division Bench has not considered the definition of Goonda. As already indicated, the Supreme court in the aforesaid two decisions, while construing preventive detention under other similar State Acts has come to the conclusion that unless there is repetition of offences or commission of similar offences by the offender, the person cannot be said to be a habitual offender and in view of such decisions of the Supreme Court, which were not placed before the Division Bench, such decision which was rendered per incurium could not be allowed.

13. In the present case, we agree that two adverse cases which had occurred in 1998 had no live link with the subsequent cases, which had occurred in October, 2003 and January, 2004 and, even excluding the two

earlier adverse cases, two other cases including the ground case, had been considered by the detaining authority. In view of the specific provision contained in Section 5-A of the Act, it is not possible to come to a conclusion that the order passed by the detaining authority was without any basis. The first contention is therefore not acceptable.

14. Learned counsel for the petitioner has further contended that admittedly the petitioner after his arrest was produced before the Magistrate on 25.1.2004, who remanded the detenu in connection with two cases, namely Chidambaram Town P.S. Cr.No.171/2004 dated 24.1.2004 and also the adverse case, namely Chidambaram Town P.S. Cr.No.1169/2003 dated 17.10.2003. It was alleged in the said FIR that the accused persons, including the present petitioner, had committed offence under Sections 147,148,324,307,395,506(ii) IPC r/w.9(b)(1) of Explosive Act, 25(1)(b), 27(1) of Arms Act and 4(1), 5 of Explosive Substances Act. In the grounds of detention, the detaining authority has referred to the fact that the detenu had been remanded in connection with Cr.No.171/04 and a bail application was pending and there was imminent possibility of the detenu coming out in bail in future. However, the grounds of detention do not at all indicate the awareness of the detaining authority regarding the remand of the very same detenue in Cr. No.1169/2003 dated 17.10.2003, wherein there had been allegation of serious offences like 397 and 395 IPC and also offences under the Arms Act, Explosives Act, Explosive Substances Act. The satisfaction recorded by the District Collector regarding the likelihood of the person being enlarged on bail is his subjective satisfaction, and this Court will not be in a position to predicate as to whether the detaining authority would have come to the very same conclusion with regard to imminent possibility of the accused being released on bail if he would have been made aware that the detenu had also been remanded in connection with Cr.No.1169/2003, and the nature of offence allegedly committed in such case. It is obvious that the detaining authority while coming to the conclusion that there was imminent possibility of being released on bail, had not at all considered the very relevant factor, namely the order of remand of the very same accused in connection with another serious crime. In our opinion, the satisfaction recorded by the Collector on that score is vitiated on account of nonconsideration of material factors.

15. Learned counsel appearing for the respondents has submitted that since the District Collector had referred to the order of remand in connection with ground case, wherein the allegation of commission of offence is under Sections 395 and 397 IPC, mere non-reference to the order of remand in connection with some other crime will not vitiate the subjective satisfaction of the District Collector. For the aforesaid purpose, he has placed reliance upon an unreported order of a Division Bench of this Court dated 24.11.2003 in HCP.No.667 of 2003. In the said case, the detaining authority had not referred to the fact that the detenu was also remanded in connection with two other crimes. The Division Bench observed "The omission to mention two other crimes contained in the remand requisition would not be fatal to this detention order. As rightly pointed out, the offences found in the ground case is graver than the offences for which he was booked in those two other cases". In the present case, the detaining authority has altogether omitted to consider the fact that the order of remand was also in respect of

another crime arising out of a separate incident, wherein the alleged offences were equally grave. Therefore, the order of this Court in HCP.No.667 of 2003, relied upon by the learned counsel for the respondent, is not applicable to the facts of the present case.

16. On the other hand, in our opinion, the ratio of the decision of the Division Bench reported in 1992(1) Crimes 1160 (KANNAN alias KANNAPPAN v. STATE OF TAMIL NADU & ANOTHER) would be applicable. In the said decision, non-consideration by the detaining authority of the possibility of the proposed detenu being released on bail in respect of another incident for which there was a separate order of remand, was considered to have vitiated the satisfaction of the detaining authority. Applying the ratio of the said decision, in our opinion, nonconsideration of the very relevant factor that the accused/detenu had been remanded in connection with another crime, wherein commission of serious offences had been alleged, has the effect of vitiating the conclusions of the detaining authority. On the aforesaid ground, we are inclined to quash the order of detention.

17. It is no doubt true that the various offences alleged against the petitioner are quite serious. However, as it is well settled that by a preventive detention liberty of a person is affected, there is requirement of strict compliance with the provisions of law and in such view of the matter, we are constrained to set aside the order of preventive detention.

18. In the result, the HCP is allowed and the detenu is set at liberty forthwith unless he is required in any other connected case.

Index : Yes
Internet: Yes

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To

1. The State of Tamilnadu,
Represented by its Secretary,
Department of Prohibition and Excise,
Fort St George, Chennai 9.

2. The District Magistrate and
District Collector,
Cuddalore District, Cuddalore.

3. The Superintendent of Police,
Cuddalore District, Cuddalore.

4. The Public Prosecutor,
High Court, Madras.

5. The Superintendent,
Central Prison, Cuddalore.